

m/049/021

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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August 30, 2004

Stephen Powell
dba Powell Rock
376 Giruard Avenue
Price, Utah 84501

RECEIVED

AUG 30 2004

DIV OF OIL GAS & MINING

Dan Powell, dba Emery Resources,
Hand delivered and sent in care of
Sidney Balthasar Unrau
Courtyard at Jamestown
3610 North University Avenue #375
Provo, Utah 846034

VIA FAX (801) 705-8480

Re: Termination of the Work out Agreement for the Cherry Hill Park Mine.

Dear Dan and Stephen Powell and Mr. Unrau:

On August 20, 2004, Stephen Powell and Dan Powell a signed copy of the Letter of Understanding intended as an addendum to the Agreement for Reclamation of the Cherry Hill Park Mine. The first recital in the Agreement provides "Emery is the current holder, as lessee of certain rights to mine real property (the lease) . . . and that the lease is current and Emery has the right under the lease to remove the stockpiled materials." In the Letter of Understanding the first recital as revised says that "Paragraph 1 of the RECITALS is clarified by the following: Emery believes the lease is current, and has not been notified by the owner to the contrary"

On August 27, I was provided with a copy of a letter dated July 27, 2004 from Paxton R. Guymon, Mr. E.J. Stokes attorney, addressed to Dan Powell and Emery Industrial Resources Incorporated which says it is "RE: Notice of Default and Termination of Lease." The third paragraph says that as a result of the failure to mine and other deficiencies the "Lease has expired and terminated." The letter suggests that Mr. Stokes may consider re-negotiating the lease. I am advised that this letter was received, and that there has been no response. At the end of the day on August 27th I received a faxed copy of another letter from Mr. Guymon to you which states that further negotiation of the lease will no longer be considered.

Your signing of the Letter of Understanding after having been sent the letter from Mr. Stokes attorney is a gross misrepresentation of the facts, if not an outright fraud on the Division.

This misrepresentation regarding your rights under the lease, and the consequential questions about the your status as a valid lessee, gives the Division substantial reason to terminate the Agreement for Settlement and Reclamation.

In addition, you continue to be barely in compliance with your obligations to the Division under the Agreement. You are required under paragraph 4d "upon commencement of shipments [of the stockpiled materials] . . . to begin work to reclaim those portions of the mine site affected by prior mining." As of this date, none of the area referred as affected by prior mining has been reclaimed, although almost all of the stockpiled material that can be sold has been removed. Given the failure to begin work despite having sold most of the stockpiled material your ability to perform this work has fallen into question. Under the provisions of paragraph 4e reclamation work is *not* to be paid for out of the escrow until the amount of the escrow exceeds the estimate of the cost of the remaining work. You are also obligated (paragraph 4c) to make payments within 20 days of each week's invoice based on records to be provided monthly. The last payment was received July 29, 2004.

Unless prior to September 8, 2004 at 5:00 p.m. you provide evidence that the lease is current, make the outstanding payments into escrow, and demonstrate that you are prepared and able to complete the reclamation work, the Agreement will be terminated and you will forfeit all rights and all monies escrowed under the Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven F. Alder", written in a cursive style.

Steven F. Alder
Assistant Attorney General

cc: Mary Ann Wright
Daron Haddock
E.J. Stokes